

Historical Review

FALL / WINTER 2021

A Publication of THE FLORIDA SUPREME COURT HISTORICAL SOCIETY



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COVER PHOTO BY
THE WORKMANS



THE
Workmans

Photo by Mark Foley



EDITOR'S MESSAGE

Welcome to the Fall/Winter 2021 issue of the Historical Review. This issue includes a variety of articles, all of which contribute to the history of the Supreme Court of Florida.

As to the Halloween-esque cover and featured article... If you have ever taken a tour of the Court in Tallahassee, you probably remember the Justices' portraits hanging in the courtroom. And, you might have learned during your tour that one of the portraits was a complete guess by the artist because she had essentially no information about the subject—"the mystery Justice." I remember looking through the portraits when I was a Clerk to find "the mystery Justice" and proudly reciting the story to my family when they visited the Court. In this issue, we are thrilled to feature an article that finally sheds some light on "the mystery Justice." Written by Kenneth Cutler after extraordinary research, "Mystery Solved: Justice George W. Macrae" explains who Justice Macrae was, where he was from, and where he went after his short term on the Court.

In this issue, we also debut a new addition to the magazine: "Ask the Archivist." You may not know that the Florida Supreme Court has a full-time archivist, Erik Robinson. In this new series, Erik will answer questions he receives on various aspects of the Court's history. Do you have a question that you want Erik to answer in a future "Ask the Archivist"? Send it to us at editor@flcourthistory.org.

We also remember Justice Stephen H. Grimes, who served as Chief Justice from 1994-1996. Justice Grimes also served as an Honorary Trustee on the Florida Supreme Court Historical Society Board of Trustees. The issue also honors the life of Susan Rosenblatt, who has been integral in the Historical Society's success and a treasured member of the Historical Society Board of Trustees.

Thank you for your continued support of the Historical Society and the Historical Review! If you are interested in contributing to a future issue, please contact me at editor@flcourthistory.org.



Melanie Kalmanson, Esq., *Editor*
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Photo by The Workmans
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Florida Supreme Court Historical Society

FALL/WINTER 2021

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The Florida Supreme Court Historical Society works to save and maintain for future generations the records of the people and events that have shaped the evolution of Florida's court system from the early 1800s, through the 21st Century, and beyond. The Society is committed to making sure people understand the importance of a strong, independent judiciary in our governmental balance of power. The Society's two-fold mission is to (1) educate the public about the critically important work of the courts in protecting personal rights and freedoms, as well as in resolving the myriad of disputes that arise within the state, and (2) preserve the rich history of Florida's judicial system.

This publication has been sponsored by the members of the Florida Supreme Court Historical Society.

DISCLAIMER

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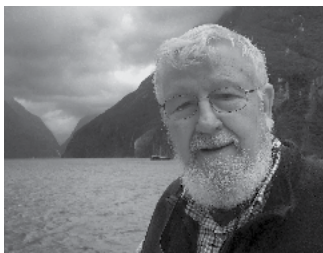
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Historical Society Trustee
Mary E. Adkins teaches at the University of Florida Levin College of Law. Professor Adkins has researched the history of the 1968 Florida Constitution and its revisions and has presented many times on Florida constitutional history. She is a member of the Historical Society's Executive Committee.

The Honorable Robert T. Benton II



The Honorable Robert T. Benton II served on the Florida First District Court of Appeal from 1994 to 2016, including a term as Chief Judge from 2010 to 2013. He clerked for the late Florida Supreme Court Justice Joseph W. Hatchett from 1975 to 1977.

Kenneth A. Cutler



Kenneth A. Cutler is a founder and partner at the Cutler Rader law firm in Coral Springs. He currently serves as Vice Mayor and a Commissioner of the City of Parkland and is the designated official "Historical Researcher" for the Parkland Historical Society.

Daniel Hoffman



Daniel Hoffman practices in civil appeals and trial support with David J. Sales, PA. He is married to Susan and Stanley Rosenblatt's eldest child, Miriam.

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Hope Keating is a shareholder with Greenberg Traurig, P.A. She is a member of the firm's Appeals & Legal Issues Group and is board certified by The Florida Bar in appellate law. She is a graduate of the Florida State University College of Law. Upon graduating from law school, she served as a law clerk at the Florida Supreme Court for Justice Stephen H. Grimes from 1993 until 1995.

Dean Erin O'Hara O'Connor



Historical Society Trustee
Erin O'Hara O'Connor is the Dean and McKenzie Professor at The Florida State University College of Law. Prior to joining FSU in 2016, Dean O'Connor taught at Vanderbilt University, Northwestern University, Georgetown University, University of Chicago, George Mason University, and Clemson University. Dean O'Connor is a member of the American Law Institute (ALI) and serves as an advisor to the ALI's Restatement (Third) of Conflict of Laws. She also serves on the Florida Supreme Court Commission on Professionalism.

Scott R. Rost



Historical Society Trustee, President
Scott R. Rost is board certified by The Florida Bar in Business Litigation. He is a Member of Brennan Manna Diamond's Orlando office, and his practice focuses on commercial and real estate litigation. He is a past Director of the Florida Bar Foundation and a member of the Florida Supreme Court Committee on Standard Jury Instructions—Contract and Business.

Craig Waters



Historical Society Trustee
Craig Waters was executive assistant to Chief Justice Gerald Kogan from 1996 to 1998. He is the current director of the Florida Supreme Court's Public Information Office.

From the President

I walked into my first business meeting as a Trustee of the Florida Supreme Court Historical Society several years ago on a cold January day in Tallahassee—melting icicles dripping onto my scarf and overcoat from the live oaks surrounding the Supreme Court Building. Attending my very first Supreme Evening event later that night, it never occurred to me that I would assume the presidency of this organization a decade or so later and preside over such events.

The Historical Society's mission is to acknowledge and elevate the history and function of the Florida Supreme Court for the benefit of the legal profession and the public at large in the State of Florida and beyond. Its activities are educational and informative as well as celebratory. As the occasion requires, the Society hosts Investiture ceremonies for incoming justices, as we did in early October for Justice John D. Couriel and will in November for Justice Jamie R. Grosshans. Similarly, we conduct retirement recognition events for those exiting the bench. Each justice is presented with a professionally crafted portrait of his or her likeness, which is ultimately housed in the courtroom of the Supreme Court. The collection of portraits provides a permanent visual record of each justice's presence and impact upon the institution.

Additionally, the Historical Society collects memorabilia, professional and personal alike, from retired Supreme Court justices and Court personnel for inclusion in the Court Archives, which is housed in the Court Library. These items are as diverse and eclectic as books, writings, furniture, and firearms. These efforts seek to memorialize and honor the lives of those who sit on the Court and author its opinions as the complex, colorful, three-dimensional persons they are: legal scholars, brilliant thinkers, and unique personalities with families, hobbies,

tastes, and distinct qualities. The Society publishes a periodical, the *Historical Review*, twice a year, featuring articles on current and past justices, noteworthy opinions rendered by the Court, and numerous topics about the Court's history. Most notably, each January, the Society hosts its annual dinner tribute to the sitting justices: A Supreme Evening. The event takes place in Tallahassee and features remarks from the Chief Justice on the state of the

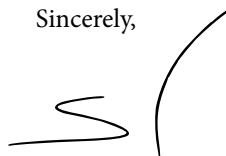
Court and a presentation by a speaker of statewide or even national acclaim.

This year, for the first time, A Supreme Evening was necessarily conducted in a virtual, livestreamed format due to the COVID-19 pandemic. Presidential historian Jon Meacham delivered a riveting presentation that coincided with the 20th anniversary of the Florida Supreme Court's involvement in *Bush v. Gore*, which was ultimately decided by the United States Supreme Court and determined the outcome of the 2000 Presidential election. Our profound hope is that the 2022 Supreme Evening

will return to the traditional, live format, as we are now in the process of preparing for the event. I hope to continue the exceptional work my predecessors have performed in this role.

On a sad note, long-time Historical Society Trustee Susan Rosenblatt recently died from complications of lingering illness. Susan and her husband Stanley have been tremendously generous supporters and champions of the Society for many years. Much of our work literally could not have been done without their kind and continuing support. Susan will be greatly missed. As we plan for the 2022 Supreme Evening, we will certainly plan a fitting tribute to Susan and her legacy as part of our program.

Sincerely,



Scott R. Rost, *President*
FLORIDA SUPREME COURT
HISTORICAL SOCIETY



The Way We Were:

The Florida Supreme Court Photographs of MARK FOLEY

By **Craig Waters**

“Recorded pictures of moments in time remind us of the way we were,” said veteran Tallahassee capitol news photographer Mark Foley.

At age 78, Foley was looking back on his long career capturing Florida history from his vantage as one of Tallahassee’s top news photographers. His extensive professional portfolio includes a trove of images that will enrich future historians’ understanding of major Tallahassee events and the people involved in them.

This larger body highlights the importance of Foley’s recent donation of a breakout collection of previously unseen photographs of Florida’s justices and Supreme Court events. These forty-eight images, now part of Court Library archives, go back more than three decades and show the changing faces of the Court and some of its most historic moments.

“Throughout my news-photography career,” said Foley, “it has always been a great privilege for me to be selected to observe various historical events of the High Court with my lens. I have particularly enjoyed the contact with various justices, doing profiles on them as the complexion of the Court evolved over the decades.”

Foley’s images cover a momentous period when the Florida Supreme Court underwent great change. Constitutional reforms in the Court’s structure and its selection process in the 1970s and 1980s finally modernized a judicial system that had originally been designed for a smaller agrarian state.

These changes launched the Florida Supreme Court into the mainstream of state and national legal history in the 1990s and 2000s.

Florida Supreme Court Archivist Erik Robinson said the collection is a major addition to the Court Library’s holdings—and will be used in the future for publications, historical research, displays, and social media postings.

“Mark has captured the humanity and, sometimes, the humor of the leaders of the third branch of state government—our seven justices,” said Robinson. “He captures that moment when a justice, whether speaking or listening, reveals his or her humanity and the concentration it takes to deliver an important message effectively. The photographs allow viewers to relate to the justices on a human level, not just the abstract words of laws, votes, and decisions that appear in official publications.”

In the collection there are photographs of Investitures of new justices, gavel ceremonies for new chief justices, lyings in state, and major oral arguments.

A number of photographs show the justices at the opening day of legislative sessions through the years. Several come from one of the biggest group of related disputes in Florida Supreme Court history—the *Bush v. Gore* presidential election cases heard in the fall of 2000.

Of the forty-eight donated images, fourteen are black-and-white while the remaining thirty-four are in color. Of the total number, thirty-three of the images appear to have been taken in or near the Florida Supreme Court building, while fifteen were inside the State Capitol across the street.

Foley has a background tied closely to Florida. He began work in 1965 as a photojournalist for the *Palm Beach Post*. In 1968, the *Tampa Tribune-Times* sent him to Tallahassee to cover his first legislative session—a move that opened



TOP: As Chief Justice B. K. Roberts provided his State of Court address to the Joint Session of the Legislature, five of the six remaining Justices looked on from their front row seats in the well of the House of Representatives chamber in the Old Capitol building in Tallahassee, Florida, in the early 1970s.

BOTTOM: Foley provided a unique perspective to his photographs, like this overhead shot of the Court during an oral argument in 1996. Left to right: Justice Charles Wells, Justice Stephen Grimes, Justice Ben Overton, and Chief Justice Gerald Kogan. Justices Leander J. Shaw, Jr, Major Harding, and Harry Lee Anstead were also members of this Court but are not in the photo.



the door to even bigger opportunities.

The Florida capitol bureau of the Associated Press soon hired him for a position that led to three decades of work shooting photographs of state government and politics, including legislative sessions.

When it came time to retire, Foley kept his finger on the shutter button. The Florida House of Representatives hired him as a senior photographer. And he also continued to work as a full-gospel minister, mentor, and life coach for the Assemblies of God churches.

Foley himself said he learned some

TOP: In 1972, Chief Justice B. K. Roberts addressed a joint session of the Legislature on the State of the Court. Pictured behind him from left to right are Senate President Jerry Thomas, Governor Reubin Askew, and House Speaker Richard Pettigrew.

BOTTOM: As the photographer for AP, Foley had rare access to the well of the House of Representatives chamber. Here, on January 22, 2002, the seven Justices of the Florida Supreme Court are pictured at Opening Day of the 2002 legislative session. The robed Justices stand in anticipation of Governor Jeb Bush's State of the State speech. Left to right: Justice Peggy Quince, Justice R. Fred Lewis, Justice Barbara J. Pariente, Justice Harry Lee Anstead, Justice Major Harding, Justice Leander Shaw, and Chief Justice Charles Wells.



important skills while taking photographs of Florida Supreme Court justices. He remembers working with former Justice Parker Lee McDonald at a photoshoot when the latter was retiring from the Court.

Curious about all the reading justices must do, Foley asked Justice McDonald how he managed to stay awake and concentrate while poring over trial records and other dense legal material.

Justice McDonald advised Foley to “stand straight up” while reading to maintain attention, especially when growing older.

“At my present age, now 78,” said Foley, “I have found this to be valuable advice and find myself standing—not too straight up, I might add—to stay awake during tedious reading.”



TOP: Chief Justice Stephen O’Connell swears in Florida House of Representatives Speaker, E. C. Rowell, in the Old Capitol, on April 6, 1965.

BOTTOM: The Justices hear oral argument in the Supreme Court of Florida Building in Tallahassee, Florida, in the early 1990s. Left to right: Justice Rosemary Barkett, Justice Ben Overton, Chief Justice Leander J. Shaw, Jr., Justice Parker Lee McDonald, Justice Stephen Grimes, and Justice Gerald Kogan.



FSCHS Facilitates Donation in Memory of Judge Van Nortwick's Charitable Legacy

By **Scott R. Rost**

After retiring from Florida's First District Court of Appeal in 2015, William "Bill" Van Nortwick joined the Jacksonville office of Miami-based law firm, Akerman LLP. He died in 2019. Recently, the office provided a generous donation in memory of Judge Van Nortwick, donating Judge Van Nortwick's Medal of Honor from The Florida Bar Foundation. The item was donated to the Florida Supreme Court Historical Society, which facilitated providing the item to the First District Court of Appeal, where it will be displayed in the library.



In 2015, Judge William Van Nortwick was given The Florida Bar Foundation Medal of Honor Award “[f]or his decades in leadership of virtually every statewide organization and committee involving pro bono and legal services in Florida, for leading the One Campaign to promote pro bono work throughout the state, and for serving as a role model for other judges and lawyers, inspiring greater volunteer participation through his example.”

More information about the award can be found on the Foundation's website at <https://thefloridabarfoundation.org/what-we-do/award-programs/medal-of-honor-award-recipients/>.

While William “Bill” Van Nortwick was a distinguished appellate judge on Florida’s First District Court of Appeal, my professional recollections of him fall entirely outside the courtroom. I never appeared before Judge Van Nortwick or argued a case in front of a panel he sat upon. Instead, he and I served together for several years on the Board of Directors of The Florida Bar Foundation—the charitable arm of The Florida Bar, which helps support pro bono efforts, legal aid, and other worthy causes, using the interest from lawyers’ trust accounts, known as Interest on Trust Accounts (IOTA) funds. Bill and his wife, Maria Henderson, both served on the Foundation’s Board of Directors with me, and I got to know them professionally and personally at our quarterly meetings and in committee projects.

Bill Van Nortwick was unfailingly genteel, pleasant, and witty. I remember my frequent astonishment that an appellate judge with an overwhelming caseload and corresponding administrative responsibilities could find the time for such demanding volunteer commitments. He frequently interjected humorous insights and observations from his years on the bench into our discussions. It was clear from Bill’s—and Maria’s—contributions to the Foundation’s important work that they both cared greatly about its mission to broaden the reach and scope of substantial justice, a goal to which the Bar Foundation is committed. I often read Judge Van Nortwick’s brilliant opinions, both in the majority and the dissent, and remind myself that this eminent jurist was the same compassionate and humane person I sat across from at a conference table, discussing the finances and mechanics of delivering legal services to the underserved.

Bill Van Nortwick was a giant within The Florida Bar and Florida’s judiciary. As lawyers, we would all do well to emulate his devotion to serving the profession and the public.



SUPREME COURT BUILDING, TALLAHASSEE, FLORIDA

 HISTORICAL SOCIETY NEWS

Historical Society Receives Donation of Watercolor Depicting Supreme Court Building

By **Mary E. Adkins**

Brenda Mueller, the Criminal Court Coordinator for Leon County, was going through her parents' home, helping them downsize to move to an apartment as they aged. Mueller found that her parents, Doug and Peggy Hammons, owned several prints of watercolors depicting sites around the Tallahassee area. Though the images were attractive, Mueller's parents no longer had space for them. They sold some of the prints but decided to donate one depicting the Florida Supreme Court Building to the Florida Supreme Court Historical Society. Mueller's co-worker, Grant Slayden, helped Mueller contact the Historical Society and make the donation.

The Historical Society immediately gave the donated watercolor work to the Florida Supreme Court Library, which was very excited and pleased to receive the print since they did not have this watercolor image as part of their collection.

The watercolor appears to date from the early 1960s. It depicts the Supreme Court Building when it faced Waller Park and shows a replica of the Liberty Bell in the foreground. In the late 1970s, Waller Park became the home of the modern Capitol complex, and the Liberty Bell replica was moved, ultimately to rest in its current location by the House Office Building.

Ask the Archivist

By Erik Robinson

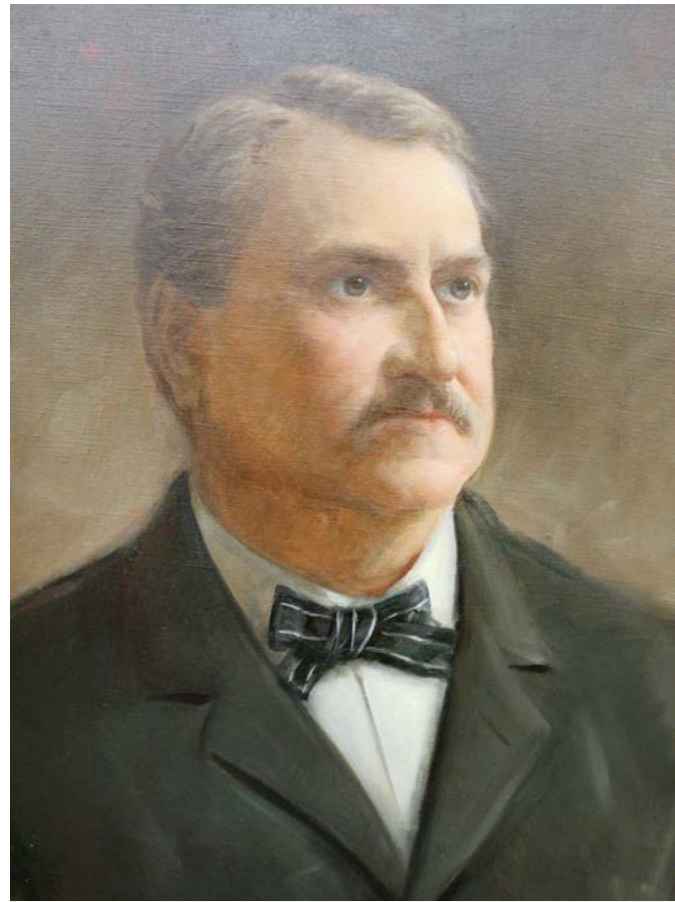
Q: Why did my ancestor start his service on the Supreme Court of Florida as the chief justice?

Benjamin S. Liddon had the rare distinction of having served the Florida Supreme Court as a chief justice beginning with his first day on the Court. That has only happened twice in the Court's history, and he was the first; Justice Jefferson Browne was the second, in 1917. Liddon was appointed to the Court because the sitting chief justice resigned in the middle of his term of office on May 31, 1894. Florida Governor Henry Mitchell appointed Liddon only until the next statewide election in November of 1894, when a candidate for the Florida Supreme Court would be chosen.

An inquiry from a descendent of Justice Liddon about how he became chief justice on his first day on the Court led to a search for the details of his time on the Court.

From 1888 until 1925, the state constitution directed that the office of chief justice be selected by "lot" among the justices. That process consisted of each justice opening a book (often the Bible) to a random page. The man who came closest to the end of the alphabet on the first open page, or, at other times, the highest number of the last digit of the page number, then became the chief justice.

Negative nationwide publicity in 1925 about this practice, compared by some to a lottery, led to a constitutional amendment that directed the justices to elect, by vote, one of their members to a two-year term as chief, with a new election at the end of every two-year term. That process continues to this day.



Benjamin Sullivan Liddon

Served June – December 1894 as Chief Justice

Served 1895 – 1897 as Justice

Born: Marianna, Florida, September 7, 1853

Died: December 21, 1909, New Orleans, Louisiana

Benjamin Liddon's ancestors were among the original American settlers of Jackson County. His father died in battle as a Confederate soldier at Petersburg, Virginia. Benjamin attended schools and worked in the lumber industry until he earned a position teaching. He studied law as well and was admitted to the Bar in 1875. He served as superintendent of schools for Jackson County between 1877 and 1879 and as a member of the board of education of the West Florida Seminary (now Florida State University). Liddon also ran for political office, serving as mayor of Marianna. His powers of oratory were considerable, and fellow attorneys remembered "an irresistible voice that charmed and swayed juries." He used his legal skills and political contacts to advance his career in the 1880s, as he argued cases for some of the major railroad companies in the state. In 1894, Chief Justice George P. Raney resigned to return to the private practice of law. Governor Henry Mitchell (a former justice himself) appointed Liddon to fill Raney's remaining term of office. In November 1894, Liddon was elected to a full six-year term as a justice. After three years on the Court, first as chief justice and then justice, Liddon decided that he could better apply his political and legal talents as a private attorney, and he resigned. He died nine years later in New Orleans while visiting family.

Tallahassee June 1st AD 1894
Friday 10 o'clock am

Court met pursuant to adjournment
Present: Honorable R. F. Taylor
" M. H. Mabry Justices

Mr Justice Mabry announced that the Honorable Benjamin S. Liddon had been duly commissioned by The Governor of the State as a Justice of the Supreme Court in the place of the Honorable George P. Raney resigned, and that he had taken the oath of office prescribed by the constitution, wherefore he came forward and presented his commission and took his seat upon the bench as a Justice of the Supreme Court of Florida, his commission running from the first day of June AD 1894 until the qualification of his successor who may be elected at the next ensuing general election.

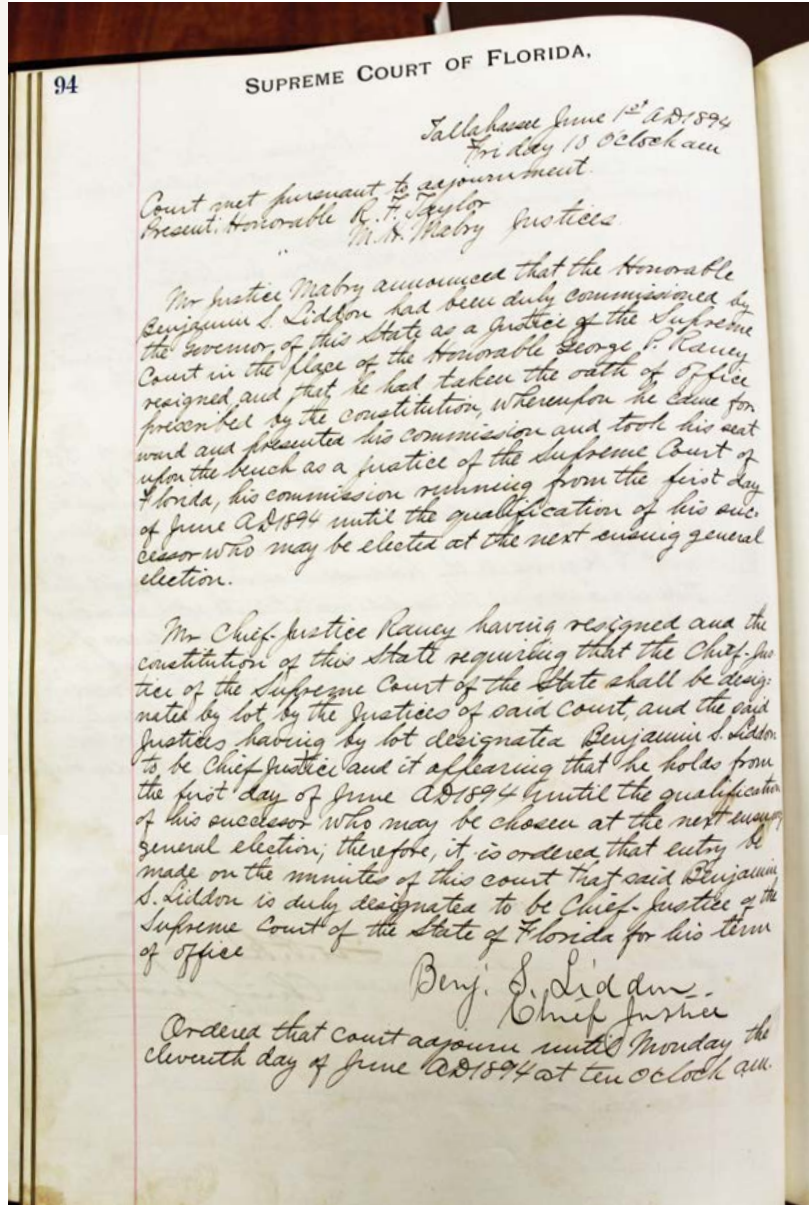
Mr Chief Justice Raney having resigned and the Constitution of the State requiring that the Chief Justice of the Supreme Court of the State shall be designated by the Justices of said court and the said Justices having by lot designated Benjamin S. Liddon to be Chief Justice and it appearing that he holds from the first day of June AD 1894 until the qualification of his successor who may be chosen at the next ensuing general election; therefore, it is ordered that entry be made on the minutes of this court that said Benjamin S. Liddon is duly designated to be Chief Justice of the Supreme Court of the State of Florida for his term of office

Benj. S. Liddon
Chief Justice

Ordered that court adjourn until Monday the Eleventh day of June AD 1894 at ten o'clock am.

The entry on page 94 of Volume IX [9] of the Florida Supreme Court Minute Book for Friday, June 1, 1894, states that newly appointed Justice Liddon presented his credentials and was seated on the Court. Although he had been appointed as a justice in the place of the resigned chief justice, the justices must have considered it necessary to choose a new chief, using the method of casting lots. The result made him the chief justice on his first day on the Court. He was to hold the position until the results of the statewide general election in November of that year became official. At the bottom of the page, Chief Justice Liddon signed his name in large letters. Apart from this ceremonial installation, no other court business took place this day.

Liddon ran for the position of Florida Supreme Court justice in his own right in the November general election of 1894 and won. On January 8, 1895, Chief Justice Liddon presided over the installation of himself as a newly elected justice of the Florida Supreme Court. The process of casting lots took place again. Chief Justice Liddon, however, was not chosen chief on this occasion. Justice Milton H. Mabry was chosen instead. Following this ceremonial part of the justices' workday, the justices heard a full day of cases.



Erik Robinson

Erik Robinson received his M.A. in Historical Administration (Museum and Archive Studies) from Eastern Illinois University. He directed two historic Illinois courthouses where Abraham Lincoln practiced law in the 1840s. In 1984, he became curator at the Museum of

Florida History, where he directed restoration of the Supreme Court chamber in the Old Capitol. In 2005, he became Archivist for the Florida Supreme Court Library.

January Term. A. D. 1895

At a Regular Term of the Supreme Court of the State of Florida begun and held at the City of Tallahassee on Tuesday the eighth day of January AD 1895.

Present: Honorable B Liddon Chief Justice
R F Taylor
M.A. Mabry Justices

The term of office of the Honorable Benjamin S. Liddon as Justice of the Court having expired and the said Honorable Benjamin S. Liddon having been commissioned by the Governor of the State as a Justice of the Supreme Court and he having taken the oath of office prescribed by the Constitution of Florida the said Honorable Benjamin S. Liddon may come forward and take his seat upon the bench as a Justice of the Supreme Court of the State of Florida, his commission running for six years from the first Tuesday after the first Monday in January A D 1895 and until his successor is qualified.

The term of office of the Honorable Benjamin S. Liddon as a Justice of this court during the continuance of which he was designated as Chief Justice having expired and the constitution of this State requiring that the Chief Justice of the Supreme Court of the State shall be designated by lot by the Justices of said Court and the said Justices having by lot designated Justice Milton H. Mabry to be Chief Justice and it appearing that he holds for six years from the first Tuesday after the first Monday in January A D 1891 and until his successor is qualified, therefore it is ordered that entry be made on the minutes of this court that Justice Milton H. Mabry is duly designated to be Chief Justice of the Supreme Court of the State of Florida for his term of office.

January TERM. A. D. 1895 195

At a Regular Term of the Supreme Court of the State of Florida begun and held at the City of Tallahassee on Tuesday the eighth day of January AD 1895.
Present: Honorable B. Liddon Chief Justice
R. F. Taylor
M. A. Mabry Justices

The term of office of the Honorable Benjamin S. Liddon as a Justice of this Court having expired and the said Honorable Benjamin S. Liddon having been commissioned by the Governor of this State as a Justice of the Supreme Court, and he having taken the oath of office prescribed by the Constitution of Florida, the said Honorable Benjamin S. Liddon may come forward and take his seat upon the bench as a Justice of the Supreme Court of the State of Florida, his commission running for six years from the first Tuesday after the first Monday in January AD 1895 and until his successor is qualified.

The term of office of the Honorable Benjamin S. Liddon as a Justice of this Court during the continuance of which he was designated as Chief Justice having expired, and the constitution of this State requiring that the Chief Justice of the Supreme Court of the State shall be designated by lot by the Justices of said Court, and the said Justices having by lot designated Justice Milton H. Mabry to be Chief Justice, and it appearing that he holds for six years from the first Tuesday after the first Monday in January AD 1891 and until his successor is qualified, therefore it is ordered that entry be made on the minutes of this court that Justice Milton H. Mabry is duly designated to be Chief Justice of the Supreme Court of the State of Florida for his term of office.

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SUPREME COURT OF FLORIDA,

Tallahassee January 9th AD 1895
Wednesday 10 o'clock am

Court met pursuant to adjournment.
Present: Honorable M. H. Mabry Chief Justice
" R. F. Taylor
" B. S. Liddon Justices.

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Supreme Court of Florida.

Tallahassee January 9th A D 1895
Wednesday 10 o'clock am

Court met pursuant to adjournment
Present: Honorable M. H. Mabry Chief Justice
R. F. Taylor
B. S. Liddon Justices

The entries in the Minute Book now reflect the status of Benjamin S. Liddon as justice and no longer chief justice. The protocol order of listing of justices always had (and has) the chief justice listed first, no matter what his place in the order of seniority. The remaining justices were listed in order of seniority (which continues to this day). Justice Liddon was placed third in protocol order.

Liddon continued to serve until January 5, 1897, when he resigned from the court to resume his career as a private attorney based in Marianna, Florida. He was active in law and state politics for the next nine years until, on December 21, 1909, he died, unexpectedly, while visiting family in New Orleans, Louisiana.

To submit a question for a future Ask the Archivist article, please email editor@flcourthistory.org.



 HISTORICAL SOCIETY NEWS

A Noble Man. A Noble Judge. Remembering Justice Stephen H. Grimes

By **Hope Keating**

“Four things belong to a judge: To hear courteously; to answer wisely; to consider soberly; and to decide impartially.” — Socrates

*“Love virtue, you who are judges on earth”
Wisdom 1:1 (Jerusalem Bible)*

Each of these ancient quotations pertaining to the essential qualities of a good judge remains applicable in the modern age, and each aptly describes the temperament and essence of Stephen H.

Grimes, the 72nd Justice on the Florida Supreme Court. Indeed, throughout his exemplary career and many achievements, Justice Grimes set a remarkable example by his conduct both on and off the bench. All who knew him remember him as thoroughly fair, decent, courteous, thoughtful, and genuine—a model of civility in all endeavors.

Justice Grimes was born in Peoria, Illinois, and moved to Lakeland, Florida, with his family when he was twelve. He attended the University of Florida, where he was inducted into Florida Blue Key, became president of the Alpha Tau

Omega fraternity, and graduated with honors. He then enrolled in the University of Florida law school, where he became editor in chief of the school's law review. With just one semester left before graduation, he was called into the Navy during the Korean War. After the war, he returned to law school, graduating in 1954 with honors. He began his legal career in Polk County with the law firm of Holland, Bevis, McRae and Smith, now known as Holland & Knight. Justice Grimes was the seventh lawyer hired at the firm and became the head of the litigation department. He remained at the firm until his appointment by Governor Reubin Askew in 1973 to the Second District Court of Appeal.

In 1987, Justice Grimes was appointed by Governor Bob Martinez to the Florida Supreme Court. Former Governor Martinez recalls interviewing candidates for the vacant seat on the Court. He remembers that what impressed him about Stephen Grimes, aside from his legal intellect and impeccable credentials, was that he had the right "demeanor, personality, and temperament" to sit on the Court. In addition to superb legal qualifications, the Governor was looking for someone who would demonstrate the proper decorum for the position. "He stood out on that score without a doubt," says Martinez.

Justice Grimes served on the Court until 1997, including a term as Chief Justice from 1994 to 1996. His contributions to the Court during his tenure as Chief Justice have had a lasting positive effect on the Court and Florida's judicial

system as a whole. With the advent of the World Wide Web, Chief Justice Grimes ushered the Court into the internet age by authorizing the Court's first website, allowing it to become one of the first courts in the world with an official web presence. He also responded to an amendment to the Florida Constitution passed in 1992 mandating that state agencies and the judicial branch develop long-range plans identifying goals and objectives and prioritizing planned expenditures. Chief Justice Grimes oversaw the implementation of this requirement for the judicial branch and began the current process of long-term planning for the Florida court system.

After his mandatory retirement from the Court at age 70, Justice Grimes returned to Holland & Knight and practiced law in the Tallahassee office until his second retirement at the age of 88.

Although he had ample reason to sound his own trumpet, Justice Grimes remained without conceit throughout his life. Such lack of arrogance is illustrated in a story told by his long-time judicial assistant, Pat Madden. Madden worked for Justice Grimes for 33 years until he retired from the Court. Sometime afterward, Madden was listening to an interview given by Chesterfield Smith, one of the co-founders of Holland & Knight. It was in listening to this interview that Madden learned for the very first time that Justice Grimes had graduated number one in his law school class. "He just never wanted to brag or call attention



ABOVE: Justice Stephen Grimes (left) is pictured with Justice Rosemary Barkett (right) on April 23, 1993 at the U.S. District Courthouse in Miami, Florida, both wearing their robes.

RIGHT: Justice & Mrs. Grimes are pictured with their daughter Sue Grimes Britt.



to himself,” Madden said. “In spite of his brilliance and accomplishments, he was a very humble person.”

As stated by Mark Walker, Chief U.S. District Judge of the Northern District of Florida, who clerked for Justice Grimes from 1994 to 1996 when he was Chief Justice, “Chief Justice Grimes embodied everything that is good and noble about our profession. He is as fine a judge who has ever served the State of Florida,” Walker said. “More importantly, he is the most decent man I’ve known.”



TOP: Justice Grimes (right) stops to take a photo with Justice & Mrs. Major Harding (left, middle) in the rotunda of the Supreme Court of Florida building in Tallahassee, Florida, on May 10, 2019, where they were attending the Investiture of Barbara Lagoa.

MIDDLE LEFT: The Justices of the Supreme Court of Florida meet with FSU Heisman Trophy winner Charlie Ward on October 5, 1993. From left to right: Justice Gerald Kogan, Justice Parker Lee McDonald, Justice Ben F. Overton, Justice Rosemary Barkett, Charlie Ward, Justice Leander J. Shaw, Jr., Justice Stephen H. Grimes, and Justice Major B. Harding.

MIDDLE RIGHT: On January 30, 1987, Governor Bob Martinez announces the appointments of Justices Stephen H. Grimes & Gerald Kogan, who stand behind the Governor with their wives.



Justice Grimes lies in state in the rotunda of the Florida Supreme Court building in Tallahassee, Florida. Current Justices of the Supreme Court of Florida (middle) observe as Chief Justice Canady (right) gives remarks in memory of Justice Grimes.

IN MEMORIAM JUSTICE STEPHEN H. GRIMES

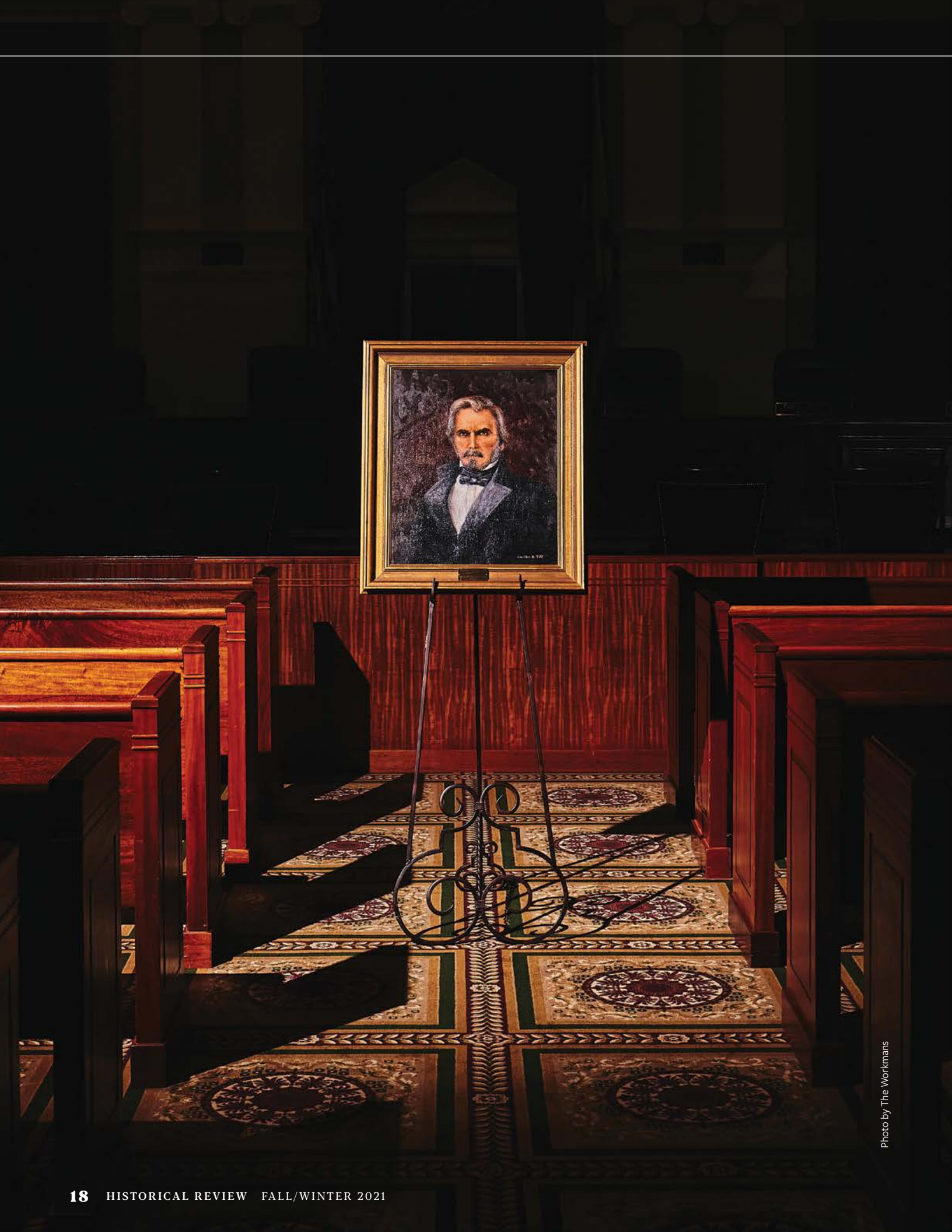


Photo by The Workmans

MYSTERY SOLVED:

JUSTICE GEORGE W. MACRAE

By **Kenneth A. Cutler**

At the stately Florida Supreme Court building located on South Duval Street in Tallahassee, portraits of all former justices of the Court hang on the inner and outer walls of the courtroom. This portrait gallery is the largest and most historically significant body of art in the building. The Court was established in 1846, shortly after Florida's entry into statehood, a time when the new age of photography was in its infancy, and some of the portraits are said to be the only existing likenesses

of the justices.

Unbelievably, as prominent and historically important as these individuals are, one of the portraits is an absolutely fictional representation, and—until now—the story of the jurist in the painting, Justice George W. Macrae, one of the Court's earliest members, has been shrouded in mystery.

The Court website contains summary reference biographies for all the justices. Macrae's brief biography states:

Former Justice George Macrae is the fourth Supreme Court Justice and is one of the mysteries of the Court. Little information has been uncovered about him. He served for one year, 1847.

[The] painting . . . of the justice is entirely imaginary. No actual photograph or portrait of him has ever been identified. There is no evidence of the date and place of his birth or of his family history.

Macrae first came into prominence in Florida in 1842, when President John Tyler appointed him United States Attorney for the Southern District.

Two years later, Macrae won election to the territorial senate from South Florida. When another candidate declined appointment in 1847 as circuit judge for the southern circuit, Governor William Moseley turned to Macrae, whom the legislature had also previously considered for the position.

After serving only a single year as circuit judge/Supreme Court justice, Macrae was replaced by Florida House of Representatives Speaker Joseph Lancaster. Macrae's activities after leaving the court are as uncertain as his origins.

The portrait described above was painted by Claribel B. Jett and commissioned by Chief Justice Joseph A. Boyd, Jr., in 1984 to fill in the gaps in the justices portrait collection, which was lacking Justices Macrae, Ossian



The Tombstone of Geo. W. Macrae is located at the Dade Family Cemetery in Church Hill, Christian County, Kentucky.

B. Hart, Franklin D. Fraser, and Albert G. Semmes. In a "tweet" published by The Florida Bar on January 4, 2018, Jett is described as operating a portrait studio in Tallahassee from 1962 to 1974 and is purported to have used photographs of Macrae's descendants to create the portrait likeness. This is contradicted by Erik T. Robinson, Archivist at the Supreme Court of Florida Library, whose vivid recollection was that he had been working as a curator at the Museum of Florida History, across the street from the Florida Supreme Court, when

Claribel Jett came to the Florida Supreme Court Building to add her name to the painted portraits in the lower right corner of each of the four that she had created in 1984 when Chief Justice Joseph Boyd commissioned the portraits. The portraits she created did not have an artist's signature until then, years after they were painted and put on display at the court.

She spoke to me about the Macrae portrait while she was in the act of painting her name on the justice portrait. Again, I did not record the conversation, so my memory of the event is all I can contribute. What I remember her saying was that she had never found any information about or image of him, so she started by painting "an uncle" of hers and dressed the resulting figure in a fanciful costume. (I note that the clothing worn by the "Macrae" figure is not historically accurate.)

Ms. Jett was quite elderly and physically infirm. She had the help of another older woman named Iona Skuce, who handed her the tiny brush and held her elbow while Ms. Jett added her signature to each of the four paintings, Ms. Skuce reloading the brush with white paint frequently. I note that several of the signatures are now darkened to an off-white and the paint used may not have been artist's oil paint or acrylic paint."

An attempt to resolve this mystery first brings one to the book *The Supreme Court of Florida and Its Predecessor Courts, 1821-1917*, which also describes the justice as an enigma. Its brief history of Macrae begins, "If mystery surrounds the life of any member of Florida's supreme court, that individual is George W. Macrae," and concludes: "Macrae's activities after stepping down from the court are as uncertain as are his origins."

New, extensive research into the elusive justice leads to the conclusion that Justice George W. Macrae was George Wallace Macrae, son of John and Elizabeth (Wallace) Macrae of Prince William County, Virginia, and that he was born in that county on June 24, 1802; died in Kentucky on March 6, 1858, at the age of 55; and

by the oath of James Whelan & C. M. Farney the two subscribing witnesses & ordered to be recorded. Whereupon said will together with this Certificate hath been duly received in my office. Given under my hand this 16th day of November 1823. Wm. A. G. Dade

Dade
Will
X

I the undersigned of the County of Christian and State of Kentucky do hereby revoke and annul all former wills which have been made by me. I give to my estate of my heirs and descendants shall be equally divided among my children who survive me. The share of my daughter Mary I give to Wm. Macrae and Mrs. Macrae in such manner as they shall separate and exclusive use of my said daughter so that their husbands whether of the first or any other marriage shall have no interest in her estate over the same. I direct that my estate shall remain undivided until such time as my eldest son shall reach the age of 21 or my oldest daughter the age of 18 years when I direct my lands to be sold and the whole estate to be divided and my share added as I have always directed. My debts I wish settled and the hands not necessary for the settlement only to be paid out and the profits or annual profits of my estate to be applied to the same and support of my children. I appoint Wm. Macrae and Mary Macrae his wife guardians of the person of my children and authorize them to assume the control of them and direct their studies. I appoint Wm. Macrae and Mrs. Macrae the executors of this my last will and testament and guardians of the estate of my children until my eldest son attains the age of 21 when I appoint him my executor and the guardian of my children and their estates. I request the Court not to require security in either case of the executors or guardians appointed aforesaid. I give to my son Wm. A. G. Dade my gold watch. To Mary

Macrae I do hereby give and be it so that my other children one hundred dollars to buy a watch the boys to receive it at 15 and the girls at 14 years of age. To my daughter Mary I give my watch and to be paid to her and her mother's share. My share I give to my son who first reaches 21 years of age. I direct my executors to retain any other debts or claims to be paid among the children. I do not wish any of the stock or farming implements or other which are standing on the farm I give to Wm. Macrae and his heirs and fifty dollars to purchase a riding horse and to Mary & Mrs. Macrae the bedstead bureau and wash stand so the big round over the parlor. These are of Mahogany. July 17, 1823

Commencement of Kentucky
County of Christian To wit J. S. John & Bryan Clerk of the County Court for the County aforesaid do hereby certify that the foregoing will of Lucien Dade was read and on the 2^d day of September 1824 returned to Court and having been examined was found to be in the handwriting of the testator by the oath of J. S. McComb and John M. Macrae and ordered to be recorded as appears from the order Book of said Court. Whereupon said will together with this Certificate hath been duly received in my office. Given under my hand this 16th day of November 1823. Wm. A. G. Dade

In and full inventory and appraisement of all the personal estate of Nathan Dade deceased which was procured to us by G. G. Goran his administrator. State and accounts to wit:
One of our account to W. H. H. amounting in all 172.50
note on A. J. Sizemore and 1st March 1828 — 51.60
One note on James and 1st March 1824 — 51.60
and W. C. Sizemore and 1st March 1828 for 65.00
One note on James and 1st March 1828 — 65.00
One note on James and 1st March 1824 — 65.00

The 1853 Will of Lucien Dade, father of Wm. A.G. Dade, mentions William & Mary Wallace and William Macrae, which connects the Dade family and the Macrae family.

is buried in the Dade Family Cemetery at Church Hill, Christian County, Kentucky.

Macrae's family roots go back several generations in Virginia and he and his family members were slaveholders or certainly benefitted from the labor of slaves. Documents show both his father, John, and his grandfather Allan Macrae as land- and slave-owners in the area of Dumfries, Virginia. The father owned acres of Virginia land and there are many references to either him or George W. Macrae's brother John in numerous Prince William County newspapers of the time.

An 1828 news article concerning the death of Colonel Barnaby Cannon, a fellow member of the Prince William County Bar, confirms George Macrae's middle name to be Wallace, the import of which ties in with the death records found in Kentucky and on his tombstone, both of which indicate his middle name to be "Wallace." It is also the maiden name of his mother, Elizabeth Westwood Wallace.

Several letters reproduced in text on the website *Prince William County Virginia* [sic] by Ronald Ray Turner and transcribed from archival records suggest that George

W. Macrae was an attorney practicing as early as 1823 in the county and specifically Brentsville, the county seat of the time. His brothers, James W. Macrae and John Macrae, were also attorneys in Prince William County. George W. Macrae was advertising his services as an attorney at law in local papers in 1824 to attend Superior and Inferior Courts of Loudoun, Prince William, and Fairfax Counties, Virginia, and in the Fredericksburg District. According to the advertisements, his office was in Brentsville.

Macrae's legal practice was varied, often involving property and trust work as well as criminal cases. In 1836, he served as a court-appointed defense attorney for a slave who was accused of assault and eventually convicted and sentenced to hang.

He was extremely active in local politics and frequently represented Prince William County before the Virginia General Assembly. For example, at a meeting of county freeholders on May 26, 1825, Macrae was elected as one of six delegates to represent the county at a state meeting concerning constitutional amendments to be held in August that year at Staunton, Virginia. In July

1826, Macrae, along with several other Prince William County citizens—including John Macrae, John W. Tyler (a relative of the future President), and William A.G. Dade—were appointed as part of a committee to assist in the receipt of funds to aid former President Thomas Jefferson in the discharge of his debts. (This and other associations with Dade, a judge of the General Court of Prince William County, may be a family connection that helps explain Macrae’s burial in the Dade Family Cemetery in Kentucky.)

An article in 1839 suggests that Macrae was a captain in the Virginia Militia and that he was appointed as a Prince William County delegate to the Democratic Party state convention in Richmond that year. In 1840, a hint that he might have been tapped as a candidate to represent the county in the General Assembly comes in the form of a published declination on his part.

The tumultuous politics of the times, and the death of President William Henry Harrison one month into his term, may have been fortuitous for Macrae, because his fellow Virginian, Vice President John Tyler, assumed the Presidency on April 4, 1841. Macrae presided in January 1842 over a county Democratic meeting where he also was named a delegate to the statewide party convention

in February. By August, newspapers were reporting his appointment by President Tyler to the post of United States Attorney for the Southern District of Florida, after L.W. Smith resigned from the position. Macrae seems to have assumed the post and arrived in Florida by the end of 1842.

After two years as U.S. Attorney, he was elected to represent South Florida in the Florida Territorial Senate. One reference suggests he was the last president of that Senate, in 1845, the year Florida was admitted into the Union. Among Macrae’s actions as Senate president, he executed a resolution seeking to gain statehood for Florida as a slave-holding state, to counterbalance the admission of Iowa as a non-slave state.

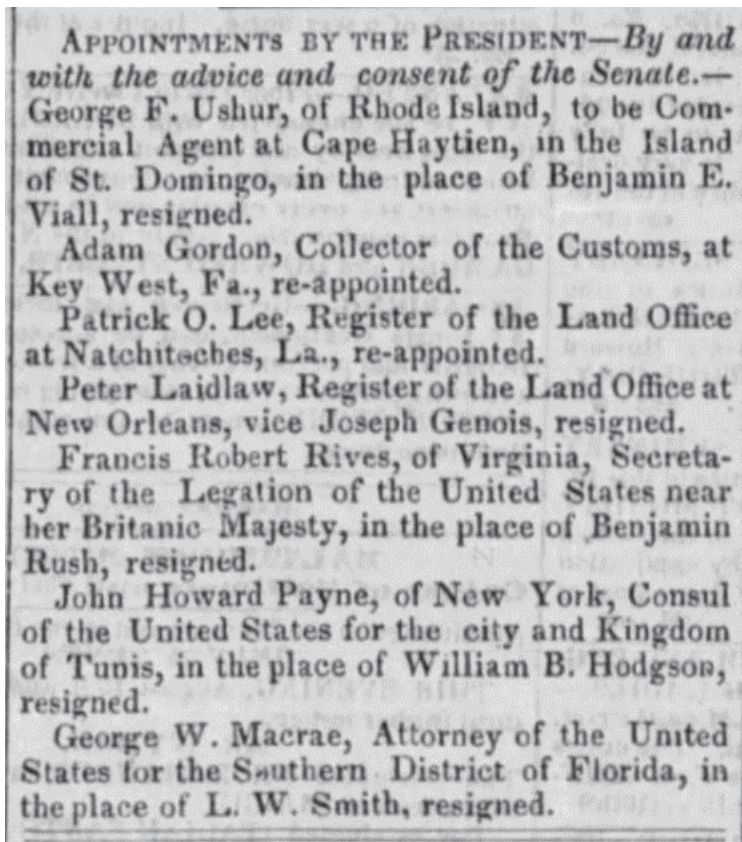
In the new state, justice was administered by circuit-riding judges and, in 1846, Macrae became the judge for the Southern Circuit, which included vast Monroe County. This appointment as the Southern Circuit judge continued when he was named to the Florida Supreme Court bench for a single year’s term in 1847.

The Florida Supreme Court Minute Book, kept in the Court archives, lists Macrae as being present at the Court throughout its two-month session from early January to early March 1847 and again on January 3, 1848; but on January 7, 1848, his successor, Joseph B. Lancaster, took his place. During his time on the Court, Macrae appears to have authored five opinions, all issued in January 1847.

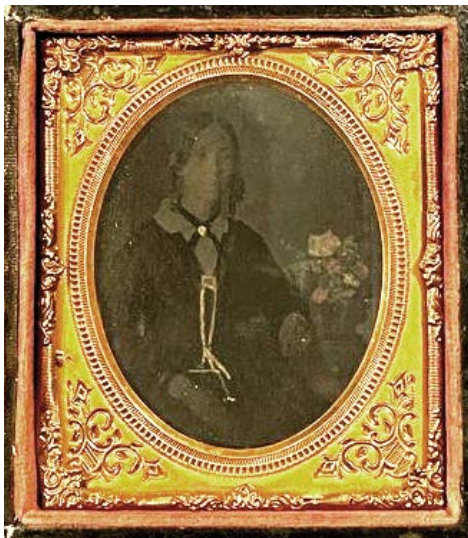
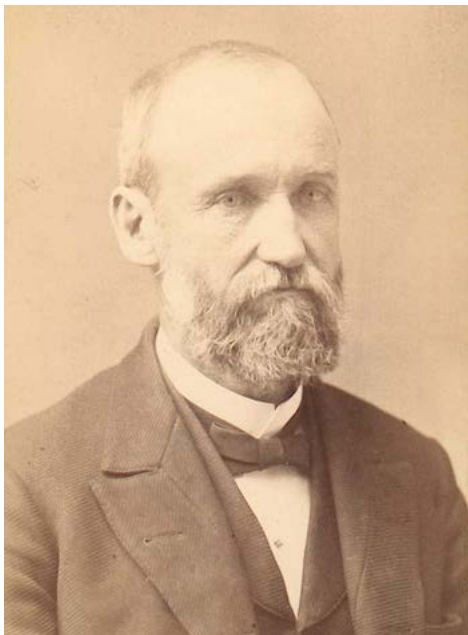
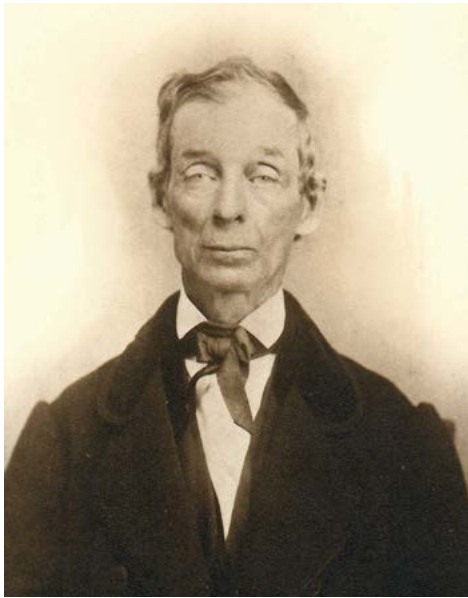
That summer, a Tallahassee newspaper reported on June 26 that Macrae had returned to the capital city—apparently from Key West—aboard the U.S. Schooner On-ka-hy-ee. He continued to ride circuit through the end of the year. On December 11, 1847, Macrae heard a Hillsborough County divorce case, *Parish v. Parish*, also in the Southern Circuit. He then headed north to preside on December 19 over the Chancery case of *Lynch v. Cole et al.* in a Marion County court, part of the state’s Eastern Circuit. After that, he moved swiftly to Columbia County, where on December 21 he was on the bench for *Mattair v. Jones*, an estate dispute.

While a judge, Macrae was very active in Florida Freemasonry, and multiple sources refer to his many different leadership roles in the organization. For example, during the two months he was sitting on the Supreme Court, he attended a meeting of the Grand Royal Arch Masons Chapter in Tallahassee on Thursday evening, January 21, 1847, where he was installed as Grand Scribe. Masonic records also document his continued presence in Florida for a time after he left the judiciary: A note of proceedings held at the Grand Lodge of Florida (Freemasons) in Tallahassee on January 8-10, 1849, shows him in attendance as a member of Dade Lodge No. 14 and “District Deputy Grand Master for the Southern District of Florida.” After that, we find no more references to Macrae in Florida.

But, on May 21, 1849, a “Judge Geo. W. Macrae” is



A newspaper announcement published in *The Baltimore Sun* (Baltimore, Maryland) on August 29, 1842, announced the appointment of George W. Macrae as U.S. Attorney in Florida by President John Tyler.



found in New York, boarding the bark (sailing ship) *Alice Tartan* for California. The San Francisco City Directory of September 1, 1850, lists Geo. W. Macrae, counsellor, on Clay Street between M and Kear. The book *California Imprints, August 1846-June 1851* confirms this to be our Macrae, indicating that, in 1850, a man by the same name had a brief venture with Washington Bartlett in publishing a newspaper called the *Journal of Commerce and Daily Bulletin*. The book further states, “Bartlett brought the press from Florida, and Macrae was also from Florida, having been a judge of the supreme court there.” In the same year, Macrae attended the first legislative session of the new State of California, where he was nominated and ran for chief justice of the Superior Court of San Francisco; he came in second in the voting and was thereby not appointed.

He returned to involvement in Masonry, and held a leadership role in 1850 as a founding member of Madison Lodge No. 23, located in Grass Valley, California. He apparently was a member just in 1853, as his name disappears from lodge rosters in later years. Macrae also served as an officer in a California division of the Sons of Temperance, as noted in an 1851 article in *The New York Times*. In 1854 he opened a firm with Augustus Heslep, Heslep & Macrae, on the corner of Merchant and Montgomery Streets in San Francisco. By 1856, he appears at a different location from Heslep in the City Directories, so it is assumed the partnership had broken up. The last reference found of him in San Francisco is in the 1858 City Directory, at 101 Merchant Street. Searches in the same directory for 1859 through 1865 yield no results for George W. Macrae. No death records, obituaries, or notices of his death are found in California searches.

Death records in Christian County, Kentucky, may reveal the answer of where George W. Macrae went. There, recorded for March 6, 1858, “Geo. W. Macrae” died of dysentery at the age of 54, near the community of Lindsay’s Mill. He is listed as single, born in Virginia, and his occupation is “Lawyer.” His parents are listed as John and Elizabeth Macrae. He is buried at Dade Family Cemetery. The gravestone marker clearly indicates that Geo. Wallace Macrae is buried there. The Find-A-Grave memorial listing for this burial indicates his birthplace as Prince William County, Virginia, bringing us full circle with the George W. Macrae described earlier.

We also can assume that the George W. Macrae buried in the Dade Family Cemetery is in fact the former Florida Supreme Court justice because of another grave in the same cemetery: that of Charles Lucien Dade, who was born August 8, 1813, in Virginia and died August 3, 1854, in Christian County, Kentucky. The will of a Lucien Dade, found in Christian County probate records and dated July 19, 1853, mentions that Lucien’s son was named William A.G. Dade, presumably the namesake of the judge connected early on to George W. Macrae in Prince William County, Virginia. Furthermore, the will specifically mentions members of both Wallace and Macrae families.

The only photographs available are those of George W. Macrae’s relatives. From top to bottom: Brother, Bailey Washington Macrae Sr.; Nephew, Bailey Washington Macrae Junior; and Sister, Amelia Ann “Emily” Macrae.

FREDERICKSBURG, Feb. 29, 1840.

To the Editor of the *Alexandria Gazette*:

Since my arrival here, this evening, from Richmond, I have been informed that I have been announced, or nominated, through the your columns, as a candidate to represent Prince William, in the next Legislature of Virginia. With a due sensibility to the favorable opinions of any portion of my fellow citizens, I must beg leave, through your paper, to say that I am *not* a candidate; and that I could not, under any circumstances, consent to become one. I have not seen your paper in my absence from Prince William; but, not doubting the information to which I have referred, I consider it due, as well to the people of my County as to myself, thus promptly to make you this communication.

GEORGE W. MACRAE.

A letter to the Editor published in the *Alexandria Gazette* on March 11, 1840, by George W. Macrae declaiming his candidacy for the Virginia State Legislature as a representative of Prince William, Virginia.

Several connections with a man named Lucien Dade had been documented during Macrae's Virginia days. A Lucien Dade served as prosecutor when Macrae defended a slave on capital charges of assault. Presumably the same Lucien Dade was named along with Macrae as a delegate to the February 1842 Virginia Democratic convention. Lastly, the 1840 Federal Census for Prince William, Eastern District, Virginia, actually has Geo. W. Macrae and Lucien Dade on the very same page, clearly indicating that they were neighbors. Contact has been made with members of the Dade family of Christian County, Kentucky, in the hopes of finding additional records.

This research also may have brought us closer to knowing what Justice Macrae might truly have looked like. The website Ancestry.com has several family trees with the Macrae family and several photos of family members, including George W. Macrae's brother Bailey Macrae. Additionally, members of the Dade family in Christian County, Kentucky, have provided the author with a daguerreotype photograph of Macrae's sister, Amelia Ann "Emily" Macrae.

While further extensive verification with documentation and other records, potentially including those from the Dade Family Cemetery, would solidify this theory further, it is believed that this Geo. Wallace Macrae is the mysterious George W. Macrae, the Florida Supreme Court justice for whom so little had been previously known. The evidence trail presented here certainly suggests that conclusion.

For ease of publication and reading, footnotes have been removed from this article. The full version, with footnotes, may be viewed on the Historical Society's website at www.flcourthistory.org.

A NOTE ABOUT THE AUTHOR

It took a Parkland personal injury attorney and amateur historian just three months to solve a mystery that had cloaked Florida's fourth Supreme Court justice, George W. Macrae, for nearly two centuries.

Ken Cutler was shocked that little was known about Macrae beyond his appointment and dates of service, and that the justice's official portrait was a fake.

Using tools he honed as a family genealogist and "history detective," Cutler uncovered 19th Century newspapers, surveys, Census records,

and letters establishing Macrae as a well-connected Virginia lawyer before he moved to Florida and assumed a series of significant government roles.

A tiny mention that a man named "Judge Macrae" boarded a ship, bound from New York to California, was a breakthrough in taking the story beyond Florida. Further research led to Macrae's death details and tombstone.

Along the way, Cutler read scores of handwritten documents, researched several other "George Macraes" until he could eliminate them, corresponded with descendants of Macrae associates,

and dipped into the histories of three states and national politics.

Cutler credits the dramatic growth in digitized historic materials with making it possible for him to establish a biography that eluded researchers for years. Though he did not find a photograph or other contemporary likeness of Macrae, the attorney—who enjoys doing "random acts of genealogical kindness"—says he is glad he could help prevent Macrae from being "almost lost to history."

"His import was significant historically for our state and his roots are tied to the earliest parts of American history."



Susan (left) and Stanley (right) Rosenblatt are pictured on the rooftop of Doak Campbell Stadium in Tallahassee, Florida, attending the Historical Society's annual dinner in 2015.

 HISTORICAL SOCIETY NEWS

Farewell to a Beloved Friend of the Florida Supreme Court Historical Society: *Susan Rosenblatt*

By **Daniel Hoffman**

The Florida Supreme Court Historical Society notes with sadness the passing of Susan Rosenblatt. Susan was a devoted officer, committee chair, long-time trustee, and generous supporter of the Historical Society. She donated countless hours and resources to the Society's mission of preserving the history of the Supreme Court of Florida.

After serving as the Society's Treasurer, Susan most recently held the position of First Vice President. Susan was diagnosed with acute myeloid leukemia in January 2019. At the time, she was very much looking forward to serving as President of the FSCHS. Indeed, she had already arranged to spend more time in Tallahassee to dedicate herself to that role. This was in keeping with Susan's style of always committing herself fully to the task at hand.

Susan was an appellate attorney practicing in Miami with her husband and partner, Stanley. Susan graduated from the University of Miami with a Bachelor's Degree in Economics at just 17 years old. She received her J.D. (with honors) from the University of Miami the month she turned 21. She returned to the law school a few years later for an LLM in Tax. As a young lawyer, Susan was an Associate of the Miami law

firm of Colson & Hicks. She considered herself very fortunate to have been mentored by the attorneys there. Susan later devoted her practice to civil appeals, working extensively with another legal giant, Bob Orseck of the Podhurst firm.

Susan and Stanley married in 1980 and began practicing together shortly thereafter. Beginning in 1991, they devoted their law practice to handling two major tobacco class actions, Broin and Engle. Both cases included multiple appellate proceedings, all of which were handled by Susan. In the two-year Engle trial, which resulted in the highest jury award in American history, Susan argued all of the motions and objections against an army of tobacco lawyers. In recent years, Susan focused her time and energies assisting FAMRI, a nonprofit created through tobacco litigation, which funds research seeking cures for diseases caused by smoking and exposure to secondhand smoke.

Susan left us on November 14, 2021. She suffered greatly during her three-year battle and fought valiantly. She is survived by her loving husband and law partner, Stanley Rosenblatt, their 9 adult children, and 30 grandchildren. They were her greatest joy.



Justice Lawson spoke to new FSU Law students during 2019 orientation programming. Justice Lawson also teaches at FSU Law. He recently taught *Lawyers As Leaders* during the spring 2021 semester.

 FLORIDA SUPREME COURT NEWS

FSU Law Students Benefit from Courses Taught by Justices

By **Dean Erin O'Hara O'Connor**

One of the major advantages of attending Florida State University College of Law is our location in the capital of the nation's third largest state. FSU Law is one block from the Florida Capitol and across the street from the Florida Supreme Court, which translates into Florida Supreme Court justices being familiar faces on campus. The law school's location also allows students many opportunities to visit the Court to observe oral arguments and to work at the state's highest Court. Additionally, many justices have taught courses at FSU Law over the years, to the great benefit of law students. Three sitting justices—Justice Ricky L. Polston, Justice C. Alan Lawson, and Justice Carlos G. Muñoz—regularly teach at FSU.

Justice Ricky Polston (FSU Law class of '87) has taught numerous classes at FSU Law during the past two decades and is teaching Insurance Law this fall. He has taught every fall and spring semester since teaching State Constitutional Law during the fall of 2003. In addition to teaching Insurance Law many times, Justice Polston has taught Florida Constitutional Law, Florida Alternative Dispute Resolution, Appellate Practice, and Accounting & the Law.

"The opportunity to take a course taught by Florida Supreme Court Justice Polston is one of the many perks of attending FSU Law," said third-year law student Alejandra Gancedo. "Justice Polston provides invaluable



Justice Polston welcomed new students at FSU Law's 2021 Orientation. Justice Polston regularly teaches classes at FSU Law, including teaching Insurance Law this fall.

insight on both the law in Florida and the way rulings are made on the bench through his personal experiences and legal career. Justice Polston's Florida Constitutional Law and Insurance Law courses have been highlights of my law school career, as he has encouraged me to think critically about legal issues in Florida."

This fall, Florida Supreme Court Justice Carlos G. Muñiz is teaching a new course, Textualism and its Rivals, at FSU Law. This is the third course Muñiz has taught at the law school since joining the Court in 2019. Students enrolled in the course are learning in depth about textualism, a dominant mode of statutory interpretation in federal and Florida courts today. Students are also learning about alternative approaches to statutory interpretation and how those approaches have been applied in case law. The course aims to equip students with practical knowledge that will make them more effective law clerks, advocates, and counselors.

"Justice Muñiz has been extremely engaging, accessible, and an incredible person to have the opportunity to learn from during law school," said third-year law student Alison Bowlby, who is currently enrolled in Textualism and its Rivals. "Having the opportunity to take a course taught by a Florida Supreme Court Justice is truly remarkable and one of the many reasons why I feel so grateful to be able to attend FSU Law."

Justice C. Alan Lawson (FSU Law class of '87) has been very engaged with the law school and FSU Law students since joining the Court. This past spring, he taught Lawyers As Leaders, an interactive course designed to help students cultivate a mastery of their leadership skills as they prepare to impact their communities as lawyers. Justice Lawson also regularly speaks at law school events

on professionalism, wellness, and successful legal careers.

We are very grateful for our strong relationship with the Court and for the wide variety of ways justices engage with students and enrich our academic community.

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 FLORIDA LEGAL HISTORY

“What a Life!”: A Former Clerk Remembers Justice Joseph W. Hatchett

By **The Honorable Robert T. Benton II**

The following was adapted from the author's remarks at Justice Joseph W. Hatchett's funeral in May 2021 in Tallahassee, Florida.

We have lost a giant. A kind, generous, unassuming, authentic human being who remained unflappable as history swirled around and through him.

What a life! Army officer, civil rights lawyer, federal prosecutor, United States Magistrate, Lieutenant Colonel, United States Marine Corps Reserve, Justice of the Supreme

Court of Florida, judge on two federal appeals courts, Chief Judge of the United States Court of Appeals for the Eleventh Circuit, and finally a lawyer with the Akerman firm.

The rule is to use the title of the highest office a person attained. In most cases, the choice is clear. Not so here. Let us also remember that he was awarded no less than four honorary doctorates. Maybe we should call him Dr. Hatchett.

But I come down in favor of Justice Hatchett. I think I can make a respectable case, on federalism grounds, that the highest office he attained was that of Justice of the Supreme

Court of Florida. Maybe I am biased because that is where I worked with him. I got to know him best when he was a justice of that court.

I first met him in Jacksonville before he became a justice, while he was serving as United States Magistrate; and in his “spare time” as ombudsman helping to bring the Duval County Jail into the twentieth century in accordance with Judge Scott’s decree. I was working as a law clerk to Judge McRae, who was the Chief Judge of the Middle District of Florida, and had been, when the District Court named Justice Hatchett magistrate. Judge Tjoflat told us yesterday that Justice Hatchett might have been the first person in the United States appointed magistrate under the new statute.

After I left Jacksonville, I did a couple of different things, including arguing a half dozen cases before the Supreme Court of Florida. But, as soon as I learned from Hugh MacMillan that Governor Askew planned to appoint Justice Hatchett to the Supreme Court, I called him up and applied to be his law clerk. Fortunately for me, Justice Hatchett was too busy to do much of a talent search, and he took me on.

When I say busy, I mean busy. Just the logistics of the Investiture were overwhelming. Invitations needed to go out, and there were a lot of them. Much of the work fell on Dot Bradley, but Justice Hatchett did all the planning. He had to wrap things up at work in Jacksonville, and at home, and prepare for the move to Tallahassee. Being the person he was, he felt he had a lot of people he had to thank.

As a federal prosecutor and magistrate, he hadn’t been in state court in almost a decade, so there was all that substantive law to get up to date on. The inner workings of the Supreme Court were new to him and a clear priority: They had to be mastered by day one. Justice Hatchett asked me to start at the Supreme Court a week before he did to get a handle on internal procedures and chart the flow of cases.

I would be willing to bet that there were more black citizens at Justice Hatchett’s Investiture than had ever before gathered in a Florida courtroom, certainly not for such a joyful occasion.

When I think about the scene at the Supreme Court at Justice Hatchett’s Investiture, I remember a story he told me about the Marion County school desegregation case. Bryan Simpson was still on the District Court then and presiding. The federal courthouse in Ocala was not that big and, for whatever reason, almost every black person who had come to watch had been excluded from the courtroom. When Justice Hatchett complained, Judge Simpson ordered that half the seats be given to black spectators, he told me.

Nothing fazed Justice Hatchett. On top of everything else, he had to win a competitive,

statewide election in a little over a year’s time to keep his seat on the Supreme Court. There were no guarantees, but there was no reason not to try his best. For him and for the State of Florida, Howell Ferguson stepped forward to head the campaign, which ended in a historic victory.

As his law clerk and a state employee, I was obliged to leave the politicking to others during working hours. But when I learned that Justice Hatchett had agreed to attend a meeting of the League of Women Voters one evening in Panama City, where I grew up, I asked if I could go along. During the drive over, he was cool, calm and collected, as usual, even though he was to debate his opponent, Harvey Duval, a Miami circuit judge, I think for the first time.

What I saw that night made me realize what a gifted trial lawyer Justice Hatchett must have been. At the debate, Harvey Duval spoke first, and went on and on about his family, telling us that Duval Street in Key West, not to mention Duval County, was named for one or another of his ancestors. When it was Justice Hatchett’s turn, he began, very calmly in a matter of fact way, “My family has been in Florida for 150 years and nothing is named for them.” You

After retiring from the bench, Judge Hatchett continued to practice law. Here, Judge Hatchett presents oral argument at the Supreme Court of Florida. On the bench, from left to right: Justice Leander J. Shaw, Jr., Chief Justice Major B. Harding, and Justice Charles T. Wells.



could just feel it. He had everyone in the room eating out of his hand.

Maybe the experience at the debate that night—and the hospitality Dick Smoak showed him—had something to do with Justice Hatchett's decision to buy a condominium in Panama City later on, after he left the bench. In town, too, not at the beach. I was gobsmacked when I heard. There are a lot of good people over there, but there are a few rascals, too. He just seemed to be able to get along with everybody.

Justice Hatchett contributed to the profession in many ways. He voluntarily took on all kinds of things, including for the American Bar Association (ABA) which, among other things, accredits law schools. After the initial accreditation, ABA representatives visit law schools periodically to be sure that law libraries and student: faculty ratios and the like continue to meet accreditation standards. When the time came, he and Sandy D'Alemberte visited Harvard Law School on behalf of the ABA.

At last report, Harvard remained accredited. The New England School of Law in Boston has a different history. That is the law school Virgil Hawkins attended after he was denied admission to the College of Law of the University of Florida.

Why was he denied admission in Gainesville? Because of the color of his skin. In Justice Sebring's words:

Virgil D. Hawkins, is a Negro citizen and resident of the State of Florida. He possesses all the scholastic, moral and other qualifications, except as to race and color, prescribed by the laws of Florida and the rules and regulations of the State Board of Control for admission to the first year class of the College of Law of the University of Florida.

State ex rel. Hawkins v. Board of Control, 47 So. 2d 608, 609 (Fla. 1950). From Rashad's biography of his grandfather, I learned that Justice Hatchett, then on a high school field trip, was in the courtroom and heard the oral argument that preceded that ruling. Arguing for Virgil Hawkins that day was Alexander Akerman, Jr., of Orlando.

After Justice Sebring's 1950 opinion, the Hawkins case went up and down to the United States Supreme Court over a period of several years and, indeed, at one point back to John A. H. Murphree, Sr., a circuit judge in Gainesville.

The justices in Washington told the Florida Supreme Court to order Hawkins' admission to the UF law school, but the Florida Supreme Court never did. In 1957—remember, that is three years after *Brown v. Board of Education*—the Florida Supreme Court handed down a disgraceful and defiant ruling, over the dissents of Justices Thomas and Sebring, who were unwilling to go along with the majority's unconstitutional insubordination. The Justice who wrote the 1957 majority opinion was still sitting on the Florida

Supreme Court in 1975 when Justice Hatchett joined the court.

Meanwhile, Virgil Hawkins had gone to Boston for law school and, only the year before Justice Hatchett was sworn in, the Florida Supreme Court had decided another interesting case. In that case, the Court admitted one Benjamin Harris Ervin to The Florida Bar eighteen years after he graduated from law school, even though he had flunked the bar exam three times.

The rule used to be that anybody who graduated from law school in Florida could practice, without taking the bar exam, by virtue of what was called the diploma privilege. Ervin argued that, but for the Korean War, he would have acted on his intention to start law school in time to have the benefit of the diploma privilege.

After the Ervin case was decided, Virgil Hawkins filed yet another petition, this one reciting that he had sought to sit for the bar exam but was turned away because the New England School of Law did not obtain accreditation until after he graduated. Hawkins contended in his new petition that he was entitled to admission to the Florida Bar because he was unable to avail himself of the diploma privilege, not because of the Korean War, but because he had been denied admission to the UF law school in violation of the Equal Protection Clause, not to mention the Supremacy Clause.

In a brief, unsigned but unanimous, per curiam opinion, the Florida Supreme Court waived the bar examination and the law school accreditation requirements for Virgil Hawkins. That was 1976. If I told you the case would not have gone that way if Justice Hatchett had not been on the Court, it would not be idle speculation.

Justice Hatchett had such a range of interests. He was a musician, and not just a trombonist. I remember when he had that gigantic organ installed in his house. The main reason he got the condominium in Panama City, I believe, was so he could go fishing at the jetties. I think I'm right that he outfitted a son-in-law as a commercial fisherman. He himself owned a herd of cattle, forty head I think, on land out near Wacissa.

He also grew grapes there and made wine. To those of you who never tasted that wine, I say to you, "You missed a bullet." But if you really want a taste, my guess is there is a lot left over.

Justice Hatchett was a great lawyer and a great judge. He was a great man. He did not deal in stereotypes. He had no need to get even with anybody. His focus was on individual human beings, on helping when he could, on showing gratitude, on moving forward to a better day. He was a great mentor and a loyal friend, and the world is not the same without him.

For ease of publication and reading, footnotes have been removed from this article. The full version, with footnotes, may be viewed on the Historical Society's website at www.flcourthistory.org.

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THE SUPREME COURT BUILDING

This photo of the Supreme Court Building on a sunny day in Tallahassee, Florida, is a part of the Mark Foley photo collection that was recently donated to the Florida Supreme Court Historical Society.